

U.S. Serial No. 10/658,842

Filed: September 9, 2003

AMENDMENT AND RESPONSE TO OFFICE ACTION

Page 16 of 20

**REMARKS****RECEIVED  
CENTRAL FAX CENTER****MAR 27 2007****I. Introduction**

This Amendment and Response amends claims 2-8, 10-18, 20-27, 29-35, 37-42, and 45-53; cancels without prejudice claims 1, 9, 19, 28, 36, 43, 44 and 54-64; and adds new claims 65-70. Claims 2-8, 10-18, 20-27, 29-35, 37-42, 45-53, and 65-70 are pending in this application. No fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account 11-0855.

**II. Claim Objections**

The Action objects to claim 25 for reciting "a duration of" without disclosing a corresponding numeric value. Claim 25 has been amended to recite a corresponding numeric value as suggested by the Examiner.

The Action objects to claim 43 for misspelling "dyable." Claim 43 has been cancelled without prejudice, thereby rendering the Action's objection to this claim moot.

Applicant's Assignee believes that the claim objections have been overcome and therefore respectfully requests that they be withdrawn.

**III. 35 U.S.C. § 112 Rejections**

The Action rejects claims 45 and 56 under 35 U.S.C. § 112 for failing to provide antecedent basis for "the dye-assistent." Claim 56 has been cancelled without prejudice, thereby rendering the Action's objection to this claim moot. Claim 45 has been amended to depend from claim 70 which provides the required antecedent basis. Thus, Applicant's Assignee believes that the rejection of claim 45 under 35 U.S.C. § 112 has been overcome and therefore respectfully requests that it be withdrawn.

U.S. Serial No. 10/658,842

Filed: September 9, 2003

AMENDMENT AND RESPONSE TO OFFICE ACTION

Page 17 of 20

#### IV. New Claims

New claims 65-70 all recite a dyed flame resistant fabric made from a blend of fibers consisting of inherently flame resistant fibers and cellulosic fibers. None of the cited references teach or suggest a dyed fabric made from a blend of only inherently flame resistant fibers and cellulosic fibers. U.S. Patent No. 4,868,041 to *Yamagishi et al.* ("*Yamagishi*") fails to teach or suggest a blend of inherently flame resistant and cellulosic fibers at all. Rather, the yarns from which the fabric is made are of "wholly aromatic polyamide fibers [] disposed as cores" surrounded by "cellulosic or wool fibers [] disposed as sheaths for the cores." Col. 4, lines 35-47. Thus, the inherently flame resistant fibers are not blended with the cellulosic fibers but rather each exclusively forms a portion of the yarn (i.e., the core or the sheath). Indeed, *Yamagishi* teaches cloth made from its disclosed yarns (yarns with unblended fibers) as superior to "cloth of uniformly blended yarns." Col. 5, lines 4-5. At least because *Yamagishi* fails to teach a blend of inherently flame resistant and cellulosic fibers, it cannot anticipate or render obvious new independent claims 65-70 or claims 2-8, 10-18, 20-27, 29-35, 37-42, and 45-53 which ultimately depend from one of these independent claims.

U.S. Patent No. 5,356,700 to *Tanaka et al.* ("*Tanaka*") also fails to teach or suggest a fabric made from a blend of only inherently flame resistant fibers and cellulosic fibers. Rather, the entirety of *Tanaka* stresses the importance of forming fabrics from a fiber blend that includes polyester fibers, which is neither an inherently flame resistant fiber nor a cellulosic fiber. According to *Tanaka*, inclusion of polyester fibers is desired to enhance the

U.S. Serial No. 10/658,842

Filed: September 9, 2003

AMENDMENT AND RESPONSE TO OFFICE ACTION

Page 18 of 20

form-retaining properties of fabrics and thereby retain pleats while preventing wrinkles from forming in the fabric:

On the other hand, polyester fibers have excellent heat-setting properties, and in a cloth made from the polyester fibers, pleats retain their form and wrinkles are not formed during wear. Also, the cloth is advantageous in that wrinkles do not form on the cloth after laundering, and thus is widely utilized as a wash-and-wear cloth.

...

In consideration of the above-mentioned problems of the prior arts, the inventors of the present invention have strived to improve the form-retaining properties of a fabric comprising, as the main component thereof, aromatic polyamide fibers. As a result, it was discovered that an aromatic polyamide fiber-polyester fiber-blended spun yarn fabric having good form-retaining properties and dimensional stability can be obtained without lowering the heat resistance, flame retardance and flame resistance, by blending the aromatic polyamide fibers and the polyester fibers in a blending ratio within a specific range different from the customary blending ratio.

Col. 1, line 67 to col. 2, line 28. Because polyester fibers are critical to the *Tanaka* invention, *Tanaka* cannot anticipate or render obvious new independent claims 65-70 which recite a fiber blend having only inherently flame resistant and cellulosic fibers. Nor can it anticipate or render obvious claims 2-8, 10-18, 20-27, 29-35, 37-42, and 45-53 which ultimately depend from one of these independent claims.

U.S. Patent No. 5,306,312 to *Riggins et al.* ("*Riggins*") discloses a process for dyeing aramid fibers. It fails to teach or suggest a fabric teach or suggest a fabric made from a blend of inherently flame resistant and cellulosic fibers and thus cannot anticipate or render obvious new independent claims 65-70 or claims 2-8, 10-18, 20-27, 29-35, 37-42, and 45-53 which ultimately depend from one of these independent claims.

U.S. Serial No. 10/658,842

Filed: September 9, 2003

AMENDMENT AND RESPONSE TO OFFICE ACTION

Page 19 of 20

Because none of the cited art anticipates or renders obvious claims 2-8, 10-18, 20-27, 29-35, 37-42, 45-53, and 65-70, these claims are allowable.

**V. 35 U.S.C. § 102(b) Rejections**

The Action rejects (1) claims 1-3, 6, 7, 9, 19, 28-32, 34, 36-40, 43, 46-49, 51, 52, 54 and 57-60 under 35 U.S.C. § 102(b) as being anticipated by *Tanaka* and (2) claims 1-3, 5-7, 19-23, 25, 26, 28-32, 36-40, 43, 46-52, 54, and 57-63 under 35 U.S.C. § 102(b) as being anticipated by *Yamagishi*. Applicant's Assignee respectfully traverses these rejections and requests that they be withdrawn. Claims 1, 9, 19, 28, 36, 43, 54, and 57-63 have been cancelled without prejudice, rendering the Action's rejections of these claims moot. As explained *supra* Part IV, claims 2, 3, 5-7, 20-23, 25, 29-32, 34, 37-40, and 46-52 have been amended to depend ultimately from an allowable independent claim. These claims are therefore allowable at least by virtue of their ultimate dependence from an allowable claim.

**VI. 35 U.S.C. § 103(a) Rejections**

The Action rejects (1) claims 4, 8-14, 16-18, 33, 35, 41, 42, 44, 45, 53, 55, 56 and 64 under 35 U.S.C. § 103(a) as being unpatentable over *Tanaka* in view of *Riggins* and (2) claims 5, 15, 19-27, 50, and 61 under 35 U.S.C. § 103(a) as being unpatentable over *Tanaka* in view of *Yamagishi*. Applicant's Assignee respectfully traverses these rejections and requests that they be withdrawn. Claims 9, 19, 44, 55, 56, 61, and 64 have been cancelled without prejudice, rendering the Action's rejections of these claims moot. As explained *supra* Part IV, claims 4, 5, 8-18, 20-27, 33, 35, 41, 42, 45, 50, and 53 have been amended to depend ultimately from an allowable independent claim. These claims are therefore allowable at least by virtue of their ultimate dependence from an allowable claim.

MAR 27 2007

U.S. Serial No. 10/658,842

Filed: September 9, 2003

AMENDMENT AND RESPONSE TO OFFICE ACTION

Page 20 of 20

**CONCLUSION**

Applicant's Assignee respectfully submits that claims 2-8, 10-18, 20-27, 29-35, 37-42, 45-53, and 65-70 are in condition for immediate allowance, and requests early notification of their allowance. If there are any matters that can be addressed by telephone, the Examiner is urged to contact the undersigned before issuance of a final Office action.

Respectfully submitted,



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